STATE OF MICHIGAN

COURT OF APPEALS

POLICE OFFICERS ASSOCIATION OF MICHIGAN and CRAIG KREZA, Plaintiffs-Appellants, v CITY OF YPSILANTI, MAYOR OF YPSILANTI, YPSILANTI POLICE AND FIRE RETIREMENT BOARD, and YPSILANTI POLICE AND FIRE RETIREMENT BOARD TRUSTEES, Defendants-Appellees.	UNPUBLISHED March 15, 2005 Nos. 251248; 256699 Washtenaw Circuit Court LC No. 02-001407-CZ

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

PER CURIAM.

In these consolidated appeals, plaintiffs Police Officers Association of Michigan (POAM) and Craig Kreza appeal as of right the trial court's orders granting summary disposition in favor of defendants City of Ypsilanti, Mayor of Ypsilanti, Ypsilanti Police and Fire Retirement Board, and Ypsilanti Police and Fire Retirement Board Trustees, and imposing sanctions in the form of attorney fees and costs against POAM in the amount of $18,627.93. We affirm.

This case arises from the termination of plaintiff Kreza's employment as a police officer with the Ypsilanti Police Department. Following Kreza's termination the POAM filed a grievance on Kreza's behalf, and the matter proceeded to arbitration. After concluding that termination of employment was too severe a penalty for the conduct cited by the city as a basis for Kreza's discharge, the arbitrator converted the discharge to a suspension conditioned on the results of a "psychological examination . . . to determine [Kreza's] fitness as a police officer." After psychologist Glen Peterson, Ph.D., subsequently determined that certain personality traits rendered Kreza unfit for duty as a police officer, the arbitrator concluded that Kreza had been "appropriately terminated" and denied the grievance.

Kreza thereafter applied for a disability pension, which was denied by the Ypsilanti Police and Fire Retirement Board after it was determined by two additional psychologists that the personality traits that rendered Kreza unfit for police work did not rise to the level of a mental disability. Plaintiffs subsequently filed the instant suit seeking a declaratory judgment or,

in the alternative, equitable relief in the form of an order directing that defendants either reinstate Kreza's employment with the city in some capacity other than as a police officer, or grant him a disability pension. The trial court, however, granted summary disposition in favor of the city defendants after concluding that, in the absence of any alleged defect in the arbitration award, it was without jurisdiction to review or otherwise grant plaintiffs any relief with respect to Kreza's discharge. Citing plaintiffs' failure to support its allegations of defect in the retirement board's decision to deny Kreza a disability pension, the court similarly granted summary disposition in favor of the board and its trustees, and awarded sanctions against plaintiffs.

On appeal, plaintiffs challenge the trial court's grant of summary disposition and award of sanctions.[1] In doing so, plaintiffs first argue that because the arbitrator's award demonstrated that the arbitrator intended that Kreza return to employment with the city in some capacity, even if not as a police officer, the trial court erred in concluding that it was without jurisdiction to review the award or otherwise grant the requested relief. We disagree.

Although this Court reviews de novo a trial court's ruling on a motion for summary disposition, see *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), judicial review of an arbitrator's decision pursuant to a labor contract is extremely limited, *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999). As explained by this Court in *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002):

> "A court may not review an arbitrator's findings of fact or decision on the merits. Rather, a court may only decide whether an arbitrator's award 'draws its essence' from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases." [quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).]

Plaintiffs concede, as they did below, that they do not assert that the arbitrator disregarded the terms of his employment or the scope of his authority. Plaintiffs further concede that, pursuant to the collective bargaining agreement between the POAM and the city, the arbitrator's award was both a final and binding decision. Plaintiffs assert, however, that they do

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[1] Contrary to defendants' assertion, the absence of language indicating that the order granting defendants summary disposition was a "final order" within the meaning of MCR 7.202(7) does not affect the finality of the order for purposes of appeal. See MCR 7.203.(A)(1). On the basis of our independent review, we conclude that the order is final, as defined by MCR 7.202(7)(a), because it disposed of all the pending claims that were raised in the complaint. See *Derbeck v Ward*, 178 Mich App 38, 41; 443 NW2d 812 (1989) (the language, or lack thereof, used by the trial court to dispose of a claim is not binding on this Court). Similarly, the trial court's reservation of the determination of the amount of sanctions did not affect the finality of its order imposing those sanctions. See *Baitinger v Brisson*, 230 Mich App 112, 116; 583 NW2d 481 (1998).

not seek reversal of the arbitration award, but rather its enforcement.[2] Relying on the arbitrator's initial award, wherein it was stated that Kreza may be required to receive professional counseling "[w]hen, and if, [he] . . . returns to his job, or a position more suitable to a disability," plaintiffs contend that the city was required to place Kreza in an alternate position. However, plaintiffs' argument in this regard ignores the arbitrator's clarifying opinion, issued after Dr. Peterson's examination, wherein the arbitrator concluded that Kreza's employment with the city was "appropriately terminated." In light of this clarifying opinion, enforcing the arbitrator's decision, as requested by plaintiffs, requires that Kreza's termination be upheld. Although the original award did indicate that there was a possibility that Kreza may be returned to "a position more suitable to a disability," the arbitrator's clarifying opinion did not preserve this as a option and, instead, approved his termination all together. The arbitrator's clarifying opinion clearly endorses Kreza's termination, and, absent an allegation that the arbitrator exceeded the scope of his authority in rendering the decision, that final, binding decision must be honored. *Lincoln Park*, *supra*.

Moreover, "[w]here no case of actual controversy exists, the circuit court lacks subject matter jurisdiction to enter a declaratory judgment." *Fieger v Commissioner of Ins*, 174 Mich App 467, 470; 437 NW2d 271 (1988). An "actual controversy" exists "only where a declaratory judgment is necessary to guide a litigant's future conduct in order to preserve the litigant's legal rights." *Id*. Here, plaintiffs failed to present a controversy subject to an action for declaratory judgment. As previously noted, plaintiffs did not assert that the arbitrator's award was defective or otherwise unenforceable in any way. To the contrary, plaintiffs acknowledged that the arbitrator's decision upholding his termination was within the scope of authority granted by the parties collective bargaining agreement, and conceded that the award was both a final and binding decision. Accordingly, the trial court properly concluded that it lacked jurisdiction to review the award or grant relief, equitable or otherwise, in contravention of that award. See, e.g., *Detroit Automobile Inter-Ins Exchange v Sanford*, 141 Mich App 820, 825-826; 369 NW2d 239 (1985) ("a party to an arbitration award may not proceed in circuit court with a complaint for declaratory relief for the purpose of relitigating the same issues decided by arbitration").[3] Summary disposition in favor of the city and its mayor was, therefore, appropriate. See MCR 2.116(C)(4).

Plaintiffs next argue that, because the retirement board failed to give sufficient weight to Dr. Peterson's conclusion that Kreza was mentally unfit for duty as a police officer, the trial court erred in granting summary disposition in favor of the board. Again, we disagree.

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[2] Although providing that an arbitrator's decision is binding upon the parties, the collective bargaining agreement involved here also provides that such an award is "enforceable in any competent court of record."

[3] Given that plaintiffs' assertion that the arbitrator's award required that Kreza be placed in an alternate position of employment was wholly contradicted by the evidence, we find that assertion to be insufficient to create a justiciable controversy for purposes of an action for declaratory judgment.

In the absence of a jurisdictional challenge, fraud, bad faith, abuse of discretion, or arbitrariness, a court will not disturb the decision of a municipal pension board. See *O'Connell v Dearborn Police & Fire Pension Bd*, 334 Mich 208, 213; 54 NW2d 301 (1952). Here, plaintiffs argue, as they did below, that the retirement board abused its discretion by failing to give the weight due Dr. Peterson's conclusion under MCL 38.556(2)(d), which requires that a member seeking benefits be examined by at least three physicians. However, the reports of Richard Jackson, M.D., and J. Barry Rubin, D.O., indicate that they reviewed Dr. Peterson's report in conducting their own evaluations. Moreover, as made clear by the reports of Dr. Jackson and Dr. Rubin, even Dr. Peterson's report does not support a finding that Kreza is "disabled" in a manner that would support the grant of a disability pension. As explained by Dr. Jackson, Dr. Peterson concluded that Kreza suffered from emotional instability, not from any form of mental illness. Dr. Rubin similarly explained that although Dr. Peterson suggested that Kreza was emotionally unstable, Dr. Peterson found no evidence of a mental disorder. Dr. Rubin further explained that although Dr. Peterson did note personality traits evincing emotional instability, there is a significant difference between merely possessing such traits and possessing a personality disorder. The evidence thus indicates that, in reaching its decision to deny Kreza a disability pension, the board properly relied on three medical reports that, as a whole, supported the conclusion that Kreza was not disabled. Accordingly, we find no error in the trial court's grant of summary disposition with respect to the board and its trustees.

Plaintiffs next argue that the trial court erred in granting defendants' requests for sanctions because, at the time that plaintiffs filed their complaint, they had a reasonable belief that the court, as a court of equity, possessed the jurisdiction and authority to grant the requested relief. Plaintiffs argue that although they were not ultimately successful, their claims were not devoid of legal merit. We disagree. "A trial court's finding that an action is frivolous is reviewed for clear error." *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. at 661-662.

"Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case." *Kitchen*, *supra* at 662. Whether a claim was frivolous is based on the circumstances at the time it was asserted. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). The mere fact that a plaintiff did not ultimately prevail does not render a claim frivolous. *Kitchen*, *supra* at 662.

The trial court did not clearly err in its award of sanctions. As explained above, plaintiffs' claims against the city and its mayor were without legal merit because the trial court clearly lacked jurisdiction to grant declaratory relief concerning the arbitrator's final and binding award.[4] Moreover, it cannot be reasonably concluded that plaintiffs possessed a reasonable basis for their allegations against the retirement board and its trustees where the evidence clearly established that the board took Dr. Peterson's report into consideration in reaching their decision

[4] See note 3, *supra*.

to deny Kreza benefits. Accordingly, we find no clear error in the trial court's award of sanctions. *Id*.

Plaintiffs also argue, however, that the trial court abused its discretion in determining that an award of $18,627.93 in attorney fees and costs was an appropriate sanction. Again, we disagree. A trial court's determination of the amount of sanctions imposed is reviewed for an abuse of discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). An abuse of discretion should only be found where the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

Our Supreme Court has set forth six factors that a court should consider when determining the amount of attorney fees that might reasonably be awarded:

> "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." [*Wood v Detroit Automobile Inter-Ins Exchange*, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).]

However, the court is not limited to these factors in making its determination, and the court need not explain its reasoning on each specific factor. *Wood, supra*; see also *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471 (1995).

In this case, aside from a general challenge regarding the time claimed by counsel for defendants to have been spent defending this matter, plaintiffs failed to present any support for their contention that counsel for defendants' requested attorney fees were excessive or unreasonable. However, we have reviewed the detailed time records submitted by counsel for both defendants and find the time claimed to be reasonable under the circumstances of this case. In reaching this conclusion, we note that plaintiffs' counsel could not herself offer the amount of time she spent on the case for comparison, because she did not keep time records. Moreover, in the proceedings below plaintiffs' counsel recognized the skill and experience of defendants' counsel, and further admitted that "preparing a motion for summary disposition is no small task." Given these facts, we cannot conclude that the trial court abused its discretion with respect to the amount of fees awarded defendants. *Barrett, supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Bill Schuette